

In the large merger between:

Bid Industrial Holdings (Pty) Limited

and

G. Fox & Company (Pty) Limited

Reasons for Decision

Approval

1. On 22 September 2004 the Competition Tribunal issued a Merger Clearance Certificate approving unconditionally the merger between Bid Industrial Holdings (Pty) Ltd ("Bid Industrial") and G. Fox & Company (Pty) Ltd ("G. Fox"). The reasons for our decision follow.

The merging parties

2. The primary acquiring firm is **Bid Industrial**, a subsidiary of Bidvest, an international investment holding company listed on the JSE.

3. The primary target firm is **G. Fox**, a private company controlled by Mr David Rubenstein. G. Fox controls and owns 46% in Siki Fox Properties (Pty) Ltd ("Siki") and 100% in G. Fox Properties (Pty) Ltd ("Fox Properties") and Globe Foundry (Pty) Ltd ("Globe Foundry").

The Merger Transaction

4. This transaction entails the acquisition by Bid Industrial of the business of G. Fox as a going concern and by the Bidvest Group Ltd ("Bidvest") of the shares in Siki, Fox Properties and the Globe Foundry from G. Fox. Post-transaction, Bid Industrial will own and control the business of G. Fox whilst Bidvest will own 100% of the shares in the abovementioned property companies and in Globe Foundry.

Rationale for the transaction

5. The parties stated that the sole controller of G. Fox, Mr David Rubenstein, (who seems to have no successor), intends to retire. Bidvest (already active in similar markets as G. Fox) sees the target firm as an attractive opportunity which will be supported by Bidvest's superior management skills and growth opportunities.

The activities of the merging parties

The primary acquiring firm

6. Bidvest is a diversified industrial group operating in the fields of Services, Distribution and Trading. All of its activities fall under 3 umbrella divisions: Services,

Commercial Products and Food Services.

7. Bidserve is the operating unit within the Services Division of Bidvest. It operates in the markets of supplying, cleaning, laundry, hygiene, security and staff facilitation services as well as janitorial products and industrial workwear. It operates through several divisions such as Steiner Hygiene involved in washroom hygiene and Prestige Group which is involved in cleaning and specialised services. The business activities of Commercial Sundries Supplies (Pty) Ltd ("Commercial Sundries") and Clockwork Clothing (incorporating Admiral Sportswear) (Pty) Ltd ("Clockwork Clothing") seem relevant for purposes of evaluating the present transaction.

The primary target firm

8. G. Fox is a commodity based wholesale and retail business selling the following category of products to corporations and industrial re-sellers and to individuals and a limited amount to retailers like Pick 'n Pay.

Rags: - these include the sale of various grades of cleaning and wiper rags which include cotton waste, coloured rags, white rags and mutton cloth.

Industrial Protective Clothing: - these covers the sale of a variety of industrial clothing such as overalls, contisuits, dustcoats, office jackets and chefs clothing; and safety shoes, gumboots and safety equipment such as head protection, hearing protection, eye and face protection and respiration protection and industrial gloves including chrome leatherwork gloves and PVC acid resistant gloves.

Disposable Tissue and Paper Products: - includes the sale of towel and tissue dispensers.

Industrial Chemical and Cleaning Products: - these embrace the sale of hand cleaners, degreasers, detergents, disinfectants, deodorants, polish and industrial soap.

Miscellaneous Products: - includes the sale of janitorial products such as industrial brushware, feather dusters, paintbrushes and rollers, cleaning solvents, packs of tea/coffee.

Relevant market

Product market

9. There exists an overlap in the merging parties' products because both parties are engaged in the sale of the following broad product categories¹ to industrial customers²:

- ☞ Disposable tissue and paper products;
- ☞ Industrial chemical and cleaning products;
- ☞ Industrial protective clothing: overalls;
- ☞ Safety shoes, gloves and safety equipment; and
- ☞ Janitorial products.

¹ There appears to be no overlap between the rags manufacturing businesses of G. Fox and any businesses within Bidvest.

² The Commission did not focus on customer segments because both parties supply customers that purchase the products for use in their own businesses or on-sell to corporate clients.

Geographic market

10. The parties indicated that all the products listed above are sold to the industrial market and not through retail channels. It appears that merging parties sell their products nationally, but a large portion of G. Fox's business is derived in Gauteng. As a result, the Commission considered the impact of the merger in Gauteng, but did not conclude on the relevant product and geographic market definition.

Impact on competition

Horizontal analysis

11. The parties have submitted an estimate of market shares in respect of each broad category for the Gauteng and national geographic markets as well as that of their competitors. Below is a table, which depicts an estimated combined post-merger market shares of the merging parties at these two levels.

Product Categories	National Market Shares	Market Shares in Gauteng
Disposable tissue and paper products	5.44%	6.79%
Industrial chemical and cleaning products	3.90%	4.87%
Industrial protective clothing: overalls	7.96%	13.19%
Safety shoes, gloves and safety equipment	0.03%	4.71%
Janitorial products	5.69%	7.5%

12. It is the Commission's contention that the above market shares are low and unlikely to raise competition concerns in the relevant markets. In the *first product category*, the largest competitors are *Kimberley Clarke* and *Nampak* with more than 30% each at both levels. In addition, there are other players in this market such as Green Tissue, Coral Tissue and Highveld Tissue.

13. *Diversey Lever* is perceived as a large competitor in the industrial chemical cleaning market. There are also several other smaller players operating in this market.

14. There are a number of firms competing with the merging parties in the industrial clothing market. This market appears to be very competitive with certain customers having indicated to the Commission that they have switched between the suppliers and could continue doing so post-merger.

15. The Commission's investigation in the *safety shoes, gloves and equipment category* revealed that the merging parties are very small players and could not obtain any market power with their combined post-merger market shares. There also appears to be a number of players competing with the merged entity. It was found that in the *janitorial products category* too there are a number of players who can constrain the merged entity should it behave anti-competitively.³

³ For more info refer to the Record (Pages 30-35) and the Commission's Report (Pages 5-6).

Vertical analysis

16. The parties appear to be vertically integrated as they source certain goods from each other. This is, however, a pre-existing customer-supplier relationship. The parties pointed out that Bidvest purchases bathroom fresheners, masking and packaging tape, wire ties and cutting machines and accessories from G. Fox. G. Fox purchases various grades of rags, different categories of overalls and detergents from Bidvest.⁴ The Commission considered the level of purchases made between the parties.

17. The Commission examined these relationships and found that neither party is a significant customer of the other.

18. In light of the facts set out above, it is unlikely for the merged entity to self-deal to exclude other customers post-transaction.

Public Interest Concerns

19. SACTWU raised concerns with regard to the impact of the merger on the continued employment of G. Fox's employees subsequent to the merger. This trade union's concerns emanated from the absence of a firm commitment from the merging parties with regard to possible retrenchments arising from the merger. The union indicated that in the absence of a firm commitment, the merged entity would be free to retrench employees after the competition authorities' approval of this transaction. Pursuant to this, the Commission sought some commitment from the parties with regard to the employment issues raised. Consequently the merging parties gave an undertaking that no unionised employees would be retrenched for *a period of 18 months from the effective date* as a result of the merger. Bid Industrial, however, emphasised that should unforeseen circumstances outside its control and unrelated to the merger occur (such as an unexpected downturn in the market in which G. Fox operates), then Bid Industrial will be required to take such action (including retrenchments if required), as are in the best interests of the business so as to ensure the future viability and sustainability of the business.⁵ It is the Commission's view that the commitments given by the parties would alleviate the union's concerns in this regard.

20. On a day prior to the hearing of this matter, the trade union wrote us a letter requesting that this Tribunal approve the proposed merger only on condition that no retrenchments take place for a period of at least 24 months. The trade union did not make any oral submissions but merely asserts that its letter constitutes a formal submission to the hearing. From the face of it, there was nothing indicative of the fact that the merger itself would result in retrenchments of certain individuals. SACTWU too failed to *at least* show that the merger would lead to retrenchment of employees. In addition, the merging parties made an undertaking *in good faith* that they would not retrench unionised employees for a period of eighteen (18) months from the date of approval of this merger by the Competition Tribunal. We are of the view that this undertaking provides adequate protection especially since there is no evidence that any retrenchments will arise out of the merger.

⁴ See the Record (Page 36).

⁵ See Page 2 (3rd bottom last paragraph) of the Parties' supplementary submissions to the Commission via a telefax dated 7 September 2004.

